

# Central Registry Reform Bill Background

HB 1190 - Krause/SB 1603 - Kolkhorst

## **BILL SUMMARY**

**The bill establishes due process procedures for placing a person's name on and removing a person's name from the child abuse registry.**

1. Requires an administrative hearing to be conducted in order for the Department of Family and Protective Services to place a person's name in the central registry.
2. Establishes due process protections for hearings conducted for the purpose of determining whether a person's name should be removed from the central registry.

**2. Establishes due process protections for hearings conducted for the purpose of determining whether a person's name should be removed from the central registry.**

**Purpose:** The bill promotes due process within the system for removing a person's name in the central registry. It does this by updating the requirements for administrative hearings conducted for the purpose of determining whether a person's name should be removed from the central registry.

**Problem:** A person who is cleared of abuse or neglect allegations after the person's name is listed in the central registry can continue to be listed in the central registry even after the person is cleared. Under current law, the Department of Family and Protective Services is not required to remove a person's name from the central registry if the person is found to have not committed abuse or neglect at any point after the department makes its initial finding. After the department places a person's name in the central registry, the department is not required to remove the person's name from the central registry until 5 years after the case is closed or until the youngest child involved in the case turns 18, whichever is later, regardless of whether the person was found to have committed abuse or neglect. This practice allows an innocent person to remain on the central registry long after a court has cleared the person of wrongdoing.

The only way for a person's name to be removed from the central registry is for the person to appeal the decision. An appeal must be made to the department rather than an independent entity such as an administrative court. If a person wants to appeal the department's decision to place the person's name in the central registry, the person must request an Administrative Review of Investigation Findings (ARIF), which is an informal review process within the department. If the person disagrees with the result of the ARIF, the person may appeal the decision to the department's Office of Consumer Relations (OCR), which issues the department's final decision about whether to remove the person's name from the central registry. Only after these processes have been exhausted may a person appeal the decision to an independent entity. These appeals are heard by administrative courts and have few guidelines to ensure due process.

**Solution:** The bill would allow a person to appeal the department's decision to place the person's name in the central registry directly to an administrative court. The bill would remedy the complicated appeal process by restructuring it to eliminate the requirement that a person appeal the department's decision using the department's informal review process before the person is allowed to appeal to an independent entity. Instead, the bill would establish a hearing process conducted by administrative courts that could be used to appeal decisions by the department to place people's names in the central registry. It would also establish due process protections within the hearing process such as requiring the hearings to be conducted in accordance with the Rules of Civil Procedure, establishing timelines for the hearing process, and ensuring a person's right to present or contest evidence.

**What prompted THSC's interest in family rights and CPS issues?**

For decades, THSC has fought to protect the right of parents to choose whether or not to educate their children at home. In more recent years, THSC has recognized that in order to defend the right to home school, it is necessary first to protect the more basic right of parents to raise their children as they see fit. In the 2000 U.S. Supreme Court decision *Troxel v. Granville*, the Supreme Court recognized this right, stating, **"The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court."** Consequently, THSC has expanded its mission to include the protection of this basic right of parents to raise their children. Since 2014, THSC has successfully defended 31 home school families in CPS cases, and in 2016 alone, THSC received and responded to over 70 CPS-related calls from members.

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## Unsubstantiated Findings

During a CPS investigation, the department automatically places a person's name on the central registry based on an internal finding that does not have to be substantiated before the person's name is placed on the registry. This means that a person's name can be placed on the registry even if the person is a fit and loving parent.

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## Limited Remedy

When a fit parent's name is placed on the registry, the only way to remove the person's name from the registry is through a complicated appeal process within the department. Only after a parent has completed this process is the parent allowed to appeal the placement to an independent judge.

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## Long-Lasting Ramifications

Once placed on the registry, a person's name remains on the registry for a minimum of five years (even if CPS dismisses the abuse or neglect allegations). Because the central registry is searched as part of background checks for certain jobs and volunteer positions, this unfair placement can cost innocent parents jobs and other opportunities.